

THE CHAIRMAN: Are you ready for the question?

*(Call for the question.)*

The Clerk will ring the quorum bell.

The question arises on the adoption of Amendment No. 11. A vote Aye is a vote in favor of the amendment. A vote No is a vote against. Cast your votes.

Has everybody voted. Does any delegate desire to change his vote?

*(There was no response.)*

The Clerk will record the vote.

There being 109 votes in the affirmative and 2 in the negative, the motion is carried. The amendment is adopted.

For what purpose does Delegate Winslow rise?

DELEGATE WINSLOW: Mr. Chairman, may I ask the Chairman of the Committee a question about this section?

THE CHAIRMAN: Delegate Kiefer, will you take the floor and yield to a question?

DELEGATE KIEFER: Yes, sir.

THE CHAIRMAN: Delegate Winslow.

DELEGATE WINSLOW: In line 6, Delegate Kiefer, there is a statement, "to have the assistance of counsel for the defense."

At what point does this right appear?

THE CHAIRMAN: Delegate Kiefer.

DELEGATE KIEFER: Delegate Winslow, this is a matter of many court decisions, and this would occur after his arrest.

THE CHAIRMAN: Delegate Winslow.

DELEGATE WINSLOW: How soon after his arrest?

THE CHAIRMAN: Delegate Kiefer.

DELEGATE KIEFER: I yield to Delegate Willoner.

Maybe he knows more specifically.

THE CHAIRMAN: Delegate Willoner.

DELEGATE WILLONER: The counsel will be provided before the confession is obtained. Assuming there is no confession of the defendant, counsel would only be required in Maryland at the time of arraignment. Thereafter it is not required at preliminary hearing because that is not an essential state of the proceedings. But if you are going to get a confession, he has

to at least be informed of counsel and the rights provided in the Miranda case before a confession could be obtained.

THE CHAIRMAN: Delegate Winslow.

DELEGATE WINSLOW: Then, Mr. Chairman, this then is subject entirely to court interpretation.

THE CHAIRMAN: Delegate Willoner.

DELEGATE WILLONER: Yes, this provision is subject to court interpretation. It is challenged to some extent by what happened in the White Case, but in the White case the defendant pleaded guilty. In that proceeding, the guilty plea was used against him in the trial. The court said at that stage he must have counsel before that plea of guilty at preliminary hearing was used against him. If he stands mute and nothing happens at the preliminary hearing, except the determination of whether or not there is probable cause to hold him for the grand jury, counsel is not required at that stage. Counsel is required at the present time at the first time of arraignment and, of course, during the trial itself and then again as you receive evidence, you require counsel.

THE CHAIRMAN: Delegate Willoner, the Chair is a bit puzzled. I had been under the impression that the decisions to which you refer, as to the right of one to the assistance of counsel, arose under the due process clause rather than under clauses similar to this. I also understood that this particular clause related only to the assistance of counsel for his defense, which would come at a later stage.

Is the Chair clear on that?

DELEGATE WILLONER: I hope the Chair is right on that. It comes under the Fifth Amendment, with the right to protection, and the right to remain silent. It is discussed in Miranda case and to assure this right to protection the court says that you must have counsel or be advised of your right to counsel. I assumed that to be what he was getting at. However, if he is talking about the mere assistance of counsel with trial purposes the first time it is required is at arraignment.

THE CHAIRMAN: Delegate Kiefer.

DELEGATE KIEFER: May I make one point clear? This is merely a restatement of what is presently in the declaration of rights now and what is also in the Sixth Amendment of the federal Constitution.

We have no intention to add to or detract from what is the present status of law.